



Attorney General

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Robert R. Corbin

June 24, 1985

The Honorable Stephen D. Neely
Pima County Attorney
177 North Church Avenue, Suite 300
Tucson, Arizona 85701 - 1117

Re: I85-081 (R85-073)

Dear Mr. Neely:

You have requested our opinion on whether Pima County can allocate to the county's general fund monies distributed to it from the Arizona highway user revenue fund which monies had been collected from vehicle license taxes and deposited by the county with the State Treasurer.

The Pima County Treasurer is required pursuant to A.R.S. § 28-1591.C to deposit license tax revenues with the State Treasurer, who must place the monies in the Arizona highway user fund. A.R.S. § 28-1598.C provides that the Department of Transportation and the State Treasurer shall distribute a portion of the Arizona highway user revenue fund to the counties. You indicate that Pima County wants to allocate these monies to its general fund. For the reasons set forth below, the monies received by the county through an A.R.S. § 28-1598.C distribution must be spent for street and highway purposes.

In your letter request of May 9, 1985, you state that language contained in Ariz.Atty.Gen.Op. No. I84-087 has lead the county to a conclusion that the monies received through A.R.S. § 28-1598.C distribution can be expended for purposes other than highways and streets. In Ariz.Atty.Gen.Op. No. I84-087, we discussed the purposes for which monies from the Arizona

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highway user revenue fund could be spent. In that discussion, we noted that Arizona Const. art. IX, § 14 (Section 14) provides, in pertinent part:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways or streets or to fuels or any other energy source used for the propulsion of vehicles on the public highways or streets, shall be expended for other than highway and street purposes

The section then sets forth in detail what constitutes highway and street purposes, a matter which was discussed at some length in I84-087.

The legislature created the Arizona highway user fund as a depository for all revenues intended for highway and street expenditure. A.R.S. § 28-1595 et seq. We observed in our opinion that not all monies, such as, revenues from the state lottery and the excess weight violation penalty revenues, deposited in the Arizona highway user fund are subject to the Section 14 constitutional limitation. Although not noted in the opinion, Section 14 excludes license tax revenue. Section 14 provides, in pertinent part:

As long as the total highway user revenues derived equals or exceeds the total derived in the fiscal year ending June 30, 1970, the State and any county shall not receive from such revenues for the use of each and for distribution to cities and towns, fewer dollars than were received and distributed in such fiscal year. This section shall not apply to moneys derived from the automobile license tax imposed under section 11 of article IX of the Constitution of Arizona. All moneys collected in accordance with this section shall be distributed as provided by law.

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Arizona Const. art. IX, § 11 (Section 11), mandates and vehicle license tax in lieu of an ad valorem property tax and provides, in pertinent part:

From and after December 31, 1973, the manner, method and mode of assessing, equalizing and levying taxes in the State of Arizona shall be such as is prescribed by law.

From and after December 31, 1973, a license tax is hereby imposed on vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax. Such license tax shall be collected as provided by law. To facilitate an even distribution of the registration of vehicles and the collection of the license tax imposed by this section, the Legislature may provide for different times or periods of registration between and within the several classes of vehicles.

* * *

From and after December 31, 1973, the Legislature shall provide for the distribution of the proceeds from such license tax to the State, counties, school districts, cities and towns.

Reading the Section 11 vehicle license tax exclusion from Section 14 together with our opinion I84-087 that not all monies placed in the Arizona highway user revenue fund are subject to Section 14 use requirements, the argument is raised that the license tax revenues can be used for purposes other than streets and highways. This argument, however, is predicated on the assumption that the Arizona Constitution is the only source of authority for the use of these funds. Section 11 specifically provides that the legislature, by statute, shall provide methods of collection and of distribution of license tax revenues as cited above.

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The legislature has exercised the authority conferred upon it by Section 11 by enacting two statutes which directly impact upon the distribution of the revenues, A.R.S. § 28-1591 and A.R.S. § 28-1598. A.R.S. § 28-1591.C provides in part:

Except as provided in § 28-1592, within five days of the close of each business day the county treasurer shall distribute thirty-one and one-half per cent of the monies deposited with the county treasurer pursuant to subsection A of this section during that day to the state treasurer, to be placed in the highway user revenue fund.

The "monies deposited" referred to above are vehicle license tax revenues.

The legislature in A.R.S. § 28-1598.C has provided that a portion of the monies deposited under A.R.S. § 28-1591.C can be redistributed to the counties. The legislature has also mandated that the monies can only be spent for highway and street purposes. A.R.S. § 28-1598.A:

All highway user revenues, as defined in § 28-1595 and in article IX, § 14 of the Constitution of Arizona, and all taxes, fees and fines collected under §§ 28-221, 28-226, 28-1011, 28-1031, 28-1361.08 and 28-1361.10 and amounts from the state lottery fund as provided in § 40-1101, subsection C shall be transferred by the officer collecting the revenues to the department. The department, after deduction of all exemptions and refunds, shall immediately transfer the revenues to the state treasurer who shall deposit the revenues in a fund designated as the Arizona highway user revenue fund. The revenues in the Arizona highway user revenue fund shall only be expended for the purposes prescribed in article IX, § 14 of the Constitution of Arizona. In the event of any default all amounts required by law or any resolution authorizing the issuance of bonds of the board to be placed in the

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principal funds, interest funds, reserve funds, sinking funds or any other funds created to service bonds issued or to be issued by the board shall be deducted by the department before the revenues are deposited in the Arizona highway user revenue fund.

(Emphasis added).

Even though license tax revenues have been excluded from the Section 14 highway and street use requirement, the revenue is subject to allocation by the legislature under the mandate of Section 11. The legislature has specifically directed in A.R.S. § 28-1598.A that monies in the Arizona highway user fund shall be spent for only those purposes set forth in Section 14. No constitutional or statutory authority exists whereby the counties are excepted from the expenditure requirements of A.R.S. § 28-1598.A or under which it can deposit into the county's general fund monies allocated to it by the Department of Transportation through the State Treasurer under A.R.S. § 28-1598.C.

Sincerely,



BOB CORBIN
Attorney General

BC:PCG:JCD:ach